

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1168 OF 2007
IN
WRIT PETITION NO. 871 OF 2007

M/s. Mangalmurti Properties ..Petitioner
(Org.Plaintiff)

Vs.

1. Khwajapeer Sayyed Hissan
Uddin Qati-E-Sanjani Chistee
Alias Thorla Shaikh Sallah
Darga and ors. ..Respondents
(Org.Defendants)

Mr. Rajendra Pai i/by Ms. Bina Pai for petitioner.
Mr. Sagheer A. Khan for respondent no.1.
Mr. P.S. Dani with Mr. S.S. Kanetkar for respondent
nos.2 to 4.

CORAM: B.H. MARLAPALLE, J.

Date : May 21, 2007.

P.C.:

1. Heard the learned counsel for the respective parties.

2. This application has been filed in Writ Petition No. 871 of 2007 and on 30/4/2007 this court

declined to consider the prayer for ad-interim relief with liberty to approach the vacation court.

3. The applicant contends that on 23/4/2007 a news report was flashed in the local newspaper to the effect that the suit property bearing Survey No. 44 of Erandawane within the Pune Municipal Corporation limits was to be put for auction sale for the recoveries to be made against the partner of respondent no.2 and one of the directors of respondent no.3. It was further submitted that on account of the order passed by the trial court not to hear the application at Exh.5, the petitioner is not in a position to apply in the pending suit or press for the hearing on the application at Exh.5 because by the order dated 1/8/2006 passed below Exh.40 in Special Civil Suit No. 658 of 2006 the trial of the suit has been stayed until further orders invoking the inherent powers under Section 151 of C.P.C. by the learned Joint Civil Judge, S.D., Pune.

4. It further appears that below Exh. 63 in Special Civil Suit No. 658 of 2006 an order has been

passed on 21/9/2006 wherein the learned Judge has observed,

"....While deciding Exh.-5 it is necessary to decide whether plaintiff has acquired any right under the alleged MOU and it cannot be considered as it is stayed by the Hon'ble High Court so it is not possible to decide Exh.-5 till stay granted by the Hon'ble High Court is in force....."

5. It is not necessary to go into the merits of the order staying the trial of the Special Civil Suit No. 658 of 2006, at least for the time being. However, even if the trial of the suit is stayed, an application filed on the basis of subsequent developments or ad-interim prayers made in Exh.-5 will have to be considered on their own merits and, therefore, the petitioner is at liberty to either file a fresh application in the pending Special Civil Suit or press for hearing the application at Exh.-5 for ad-interim reliefs by bringing on record additional documents. The learned counsel for the respondents

fairly conceded that such a remedy cannot be denied.

6. Hence, this civil application and the writ petition are disposed off by directing the trial court to hear the application at Exh.-5 for the prayer of ad-interim relief or an additional application that may be filed for the ad-interim relief prayed for in this application and decide the same on their own merits and it is made clear that such a new application or the application at Exh.5 will have to be heard after giving due opportunity to the present respondents to put up their case.

(B.H. Marlapalle, J.)